IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4815 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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VINUBHAI HARIBHAI MODI - Petitioner(s)
Versus
BABUBEN WD/O GOPALBHAI & ANR. - Respondent(s)

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Appearance :
MR. JITENDRA M. PATEL for Petitioner(s).
None for Respondent(s) : 1-.
MR. L.R. PUJARI, ASST. GOVERNMENT PLEADER for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/12/2006

ORAL JUDGMENT

Heard the learned Counsel for the parties.

2. Short facts leading to the present dispute are

that the petitioner had purchased 21 Gunthas of land of Survey No.312 from one Gopalbhai Bhagabhai (since deceased) for a sum of Rs.13,000/- under a registered Sale Deed dated 15th June, 1971. An entry was made in the revenue records and came to be certified on 22nd April, 1981.

2.1 Somewhere in the October'1985, the Mamlatdar took up *suo motu* proceedings under Section 84(C) of the Bombay Tenancy & Agricultural Lands Act, 1948 [“the Act' for short] and issued a notice to the petitioner to show cause that why the sale be not held to be invalid in view of breach of the mandatory conditions contained in Section 63 of the Act, which requires that a purchaser should be an agriculturist.

2.2 The petitioner appeared before the Mamlatdar and filed his reply in October'1985 and thereafter, in January'1986 and raised number of pleadings. One of his submission was that he was a tenant of the land bearing Survey No.110 of Village Tajpur, but, since after purchase of the land in dispute, he has surrendered the land of Tajpur in favour of its original owner. The Mamlatdar observed that the petitioner, in fact, was an agriculturist, however, he found breach of Section 63 and

ultimately, held that the Sale Deed dated 15th June, 1971 was illegal, invalid and in breach of the provisions of the Act. He, accordingly, directed forfeiture of the land.

2.3 The appeal, revision and review have proved futile and the petitioner is before this Court.

3. After arguing the matter on merits, especially, on the ground that the petitioner as a tenant would be deemed to be an agriculturist and in view of the findings of the Mamlatdar that the petitioner was an agriculturist the sale deed could not be held to be invalid, Shri Patel submitted that the proceedings under Section 84(C) of the Act even in relation to violation of Section 63 should be taken up by the Authorities within a reasonable time, that is, within a period of three years, as held by the Supreme Court in the matter of ***Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim***, [***1997 (6) S.C.C. 71***], and as in this case, the proceedings commenced at least after 4 and ½ years of certification of the entry, the proceedings deserve to be quashed.

4. Shri Pujari, learned Assistant Government Pleader for the State, however, submitted that what was

absolutely invalid, illegal and void cannot be allowed to become valid simply by lapse of time. He, however, submits that the subordinate Tribunals/Authorities were justified in holding against the interest of the petitioner.

5. In the matter of ***Mohamad Kavi Mohamad Amin***(*supra*), the entry was made on 14th February, 1973 and the notice was issued in September'1976, that is, after a period of 3 and ½ years. The Supreme Court has observed that where no time limit is prescribed for exercise of power under a statute, it would not mean that it can be exercised at any stage. According to the Supreme Court, such power had to be exercised within reasonable time. In the said case, the Supreme Court has further held that the notice after 3 and ½ years was beyond the reasonable time. If such is the judgement of the Apex Court, then, it is to be held in the present case that exercise of powers and issuance of notice after lapse of 4 and ¼ years would be not within reasonable time and the Authorities would not be entitled to proceed with the matter.

6. The petition is allowed. All the orders passed by the Tribunal, Appellate Court and the Mamlatdar are

quashed and set aside. The notice to show cause is also quashed. Rule is made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**